TAY ENG CHUAN

v.

PROFESSIONAL ENGINEERS BOARD

HIGH COURT, SINGAPORE
FA CHUA J
[ORIGINATING MOTION NO. 22 OF 1981]
23 MARCH 1982

ADMINISTRATIVE LAW: *Application for registration as a professional engineer - Interview by committee - Application deferred for one year to gain more experience - Request for notes of evidence and Grounds of Decision rejected - Rules of natural justice - Whether observed - Sections 5, 8 Professional Engineers Act 1970.*

The appellant a Civil Engineering graduate from Singapore University, applied for registration as a professional engineer in March 1981 after having 5 years of practical experience. The appellant was interviewed by a committee on 24 March 1981 and subsequently he was informed by the Secretary of the Board that he did not pass his interview. On 2 April 1981 the appellant wrote to the Registrar of the Board stating that he was dissatisfied with the interview and requested for re-interview. Meanwhile the appellant was informed by a letter dated 7 May 1981 from the Permanent Secretary (National Development) that his application had been deferred for one year to enable him to get more experience at professional level. On 20 May and 3 June 1981 the appellant's solicitors wrote to the Registrar requesting for notes of evidence and grounds of decision to enable the appellant to file an appeal to the High Court. This was rejected.

The appellant alleging that the Board had not observed the rules of natural justice moved the Court for an order that the said decision of the Board be reversed, varied or set aside on the following grounds:

(1) a proper record must be placed before the Board for it to come to a proper decision. There was no record and the Board could not have come to a proper decision;

(2) a member who sat on the committee also sat on the Board and influenced the Board's decision as there is a real likelihood of bias;

(3) there were no notes of evidence and grounds of decision and consequently he (appellant) does not know on what grounds the committee came to the conclusion that he was not fit for registration;

(4) the interview was a sham;

(5) he was asked ridiculous questions at the interview.

Held:

[1] The Board has every right to interview the appellant to examine his working experience and this practice has been followed since the coming into force of the Act in 1971 and must be known to the appellant. There is no other way of carrying out s. 8(3) except by an interview;

[2] The appointment of the Committee to interview the appellant was pursuant to r. 8 of the Professional Engineers Board Rules, 1971 and was perfectly in order;

[3] The Board is not required to give any reasons for its rejection and it is well within the ambit of the powers of the Board to defer the appellant's application for a year;

[4] The Board had acted with complete fairness and that all the criticisms and the Board's conduct are without foundation.

[Motion dismissed with costs.]

Cases referred to:
R. v. Gaming Board for Great Britain [1970] 2 All ER 528
McInnes v. Onslow Fane [1978] 3 All ER 211

Legislation referred to:
Professional Engineers Act 1970 [Sing], ss. 5, 8, (1)(a), (1) (b), (2) (b), (3) (b)

For the appellant - Singa Retnam
For the respondent - L.A.J. Smith (Goh Joon Seng with him)

JUDGMENT

Chua J:

This is an appeal by Tay Eng Chuan (the appellant) against the decision of the Professional Engineers Board, Singapore, (the Board) deferring the appellant's application for registration as a professional engineer for one year.

The appellant graduated from the University of Singapore in 1975 with a degree in Civil Engineering. He first worked with Mott, Hay & Anderson, John Connell (Pte), Consulting Engineers, as an engineer. He was with this firm from 26 September 1975, until 30 June 1978, a period of two years and nine months. He then joined Lau Downie and Partners Consulting Engineers, from December 1978 to April 1980, as a civil and structural engineer. From 7 April 1980, to the present he has been employed by McDermott Engineering Pte. Ltd. as a structural engineer.

In March 1981, the appellant submitted his application for Registration under s. 8 of the Professional Engineers Act 1970, (the Act), together with (1) a Report of about 2,000 words, as requested by the Board, describing his professional engineering training and experience since graduation (the Report); (2) all necessary certificates and testimonials.

The appellant was interviewed by a Committee consisting of Mr. Ong Chin Lock, Mr. Y.C. Wong and Dr. Saw Choo Ban, on 24 March 1981.

The appellant was informed by the Secretary of the Board that he did not pass his interview and on 2 April 1981, the appellant wrote to the Registrar of the Board (the Registrar) stating that he was dissatisfied with the interview and requested for a re-interview.

The appellant then received a letter dated 7 May 1981, from the Permanent Secretary (National Development) informing him that his application had been deferred for one year to enable him to get more experience at professional level. The appellant's solicitors then wrote to the Registrar on 20 May referring to the letter of the Permanent Secretary and inquiring if that was the decision of the Board and asking for the notes of evidence and grounds of decision to enable the appellant to file an appeal to the High Court. The Registrar replied on 28 May in these terms:

> Mr. Tay Eng Chuan was found to have inadequate experience at professional level as required under s. 8(2) (b) of the Professional Engineers Act, Cap. 255. In the circumstances, the Board decided to defer Mr. Tay's application for registration as a professional engineer for one year from date of the interview to enable him to gain more experience at professional level. At the end of the said period of one year, Mr. Tay will be interviewed again. If he is then found to have gained the requisite experience his registration as a professional engineer will be effected.

In the meantime, I am directed by the Board to inform you that Mr. Tay's appeal for re-interview cannot be acceded to.

On 3 June the appellant's solicitors wrote to the Registrar asking for the grounds of decision and the notes of evidence. The Registrar replied on 2 July stating "There is nothing in the Act or in the Rules thereunder to require the provision of grounds of decision or Notes of Evidence."

The appellant now moves the Court for an order that the said decision of the Board be reversed, varied or set aside. He says that the Board should have registered him and that the Board had not observed the rules of natural justice.

The stand taken by the appellant is this. He is the holder of a Degree of Bachelor of Engineering from the University of Singapore s. 8(1) (a). After obtaining his degree he has had five years of practical experience in engineering work at professional level in Singapore whereas under s. 8(2) (b) he need only have, out of the five years practical experience, two years practical experience at professional level in Singapore. In support of his application for registration he has submitted a Report of about two thousand words, as requested by the Board, describing his professional engineering training and experience since graduation and his work schedule was verified by his employers and ex-employers. He has also submitted two certificates of his good conduct and character and testimonials from his former employers. He has complied with the requirements of s. 8 and he is entitled to registration as a professional engineer. The Board has no authority to make him face an interview by a panel of three persons before he is eligible for registration. In his present firm he is a structural engineer "A", the top of the grade in the Company for this post. He has had enough professional, experience as required by the Act over the last five years and he must therefore qualify for registration.

As regards the appellant's complaint that he was made to face an interview, he has lost sight of the provision of s. 8(3)(b) of the Act which provides that the Board may refuse to register any applicant who is in the opinion of the Board unable to carry out the duties of a professional engineer effectively in Singapore. Is the Board to form an opinion of the appellant only on the Report and testimonials he has submitted? I do not think so. It seems to me that the Board has every right to interview the appellant to examine his working experience and this practice has been followed since the coming into force of the Act in 1971 and must be known to the appellant. It seems to me that there is no other way of carrying out s. 8(3) except by an interview.

Then the appellant complains that the interview was not by the Board but by three persons only one of whom is a member of the Board. Rule 8 of the Professional Engineers Board Rules 1971, provides that the Board may from time to time appoint from its members or from registered professional engineers committees to assist the Board in carrying out its functions under the Act and that every such committee shall report its proceedings and any recommendation which it may make to the Board. So the appointment of the Committee to interview the appellant was perfectly in order.

The appellant says that the Board and the Committee are in breach of natural justice. The appellant says first, a proper record must be placed before the Board for it to come to a proper decision. There was no record and the Board could not have come to a proper decision. Second, that Mr. Ong Chin Lock who sat on the Committee also sat on the Board and influenced the Board's decision as there is a real likelihood of bias. Third, there were no notes of evidence and grounds of decision and consequently the appellant does not know

on what grounds the Committee came to the conclusion that he was not fit for registration. Fourth, that the interview was a sham. Fifth, that he was asked ridiculous questions at the interview.

Mr. Ong Chin Lock, a member of the Board, in his affidavit states that the Board in each case appoints a committee of three experienced registered engineers to assist the Board in verifying the qualifications and ascertaining through interview the professional experience of an applicant. The Committee's report is then tabled before the Board at its meeting. The Board will then consider the application together with the documents accompanying the application and the Committee's report. If the Board, acting entirely on its own, is satisfied that the applicant qualifies under s. 8 the applicant will be registered, except where the application falls under s. 8(1) (b) of the Act in which event the registration is effected after the approval of the Minister for National Development is obtained.

Counsel for the Board accepted that refusal to register an applicant by the Board is subject to any requirements of natural justice or fairness which will be enforced by the Courts. The question is: What are those rules?

Lord Denning M.R. in *R. v. Gaming Board for Great Britain* [1970] 2 All ER 528 said at p. 533):

> It is not possible to lay down rigid rules as to when the principles of natural justice are to apply; nor as to their scope and extent. Everything depends on the subject matter.

Megarry V-C. in *McInnes v. Onslow Fane,* [1978] 3 All ER 211 said at p. 218:

> Second, where the Court is entitled to intervene, I think it must be considered what type of decision is in question. I do not suggest that there is any clear or exhaustive classification; but I think that at least three categories may be discerned. First, there are what may be called the forfeiture cases. In these, there is a decision which takes away some existing right or position, as where a member of an organisation is expelled or a licence is revoked. Second, at the other extreme there are what may be called the application cases. These are cases where the decision merely refuses to grant the applicant the right or position that he seeks, such as membership of the organisation, or a licence to do certain acts. Third, there is an intermediate category, which may be called the expectation cases, which differ from the application cases only in that the applicant has some legitimate expectation from what has already happened that his application will be granted. This head includes cases where an existing licence-holder applies for a renewal of his licence, or a person already elected or appointed to some position seeks confirmation from some confirming authority: *see*, for instance, *Weiberger v. Inglis; Breen v. Amalgamated Engineering Union*; and see *Schmidt v. Secretary of State for Home Affairs; R. v. Barsnley Metropolitan Borough Council, ex parte* Hook.
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> It seems plain that there is a substantial distinction between the forfeiture cases and the application cases. In the forfeiture cases, there is a threat to take something away for some reason; and in such cases, the right to an unbiased tribunal, the right to notice of the charges and the right to be heard in answer to the charges (which, in *Ridge v. Balwin,* Lord Hodson said were three features of natural justice which stood out) are plainly apt. In the application cases, on the other hand, nothing is being taken away, and in all normal circumstances there are no charges, and so no requirement of an opportunity of being heard in answer to the charges. Instead, there is the far wider and less defined question of the general suitability of an applicant for membership or a licence. the distinction is well-recognised, for in general it is clear that the Courts will require natural justice to be observed for expulsion from a social club, but not on an application for admission to it. The intermediate category, that of the expectation cases, may at least in some respects be regarded as being more akin to the forfeiture cases than the application cases; for although in form there is no forfeiture but merely an attempt at acquisition that fails, the legitimate expectation of a renewal of the licence or

> confirmation of the membership is one which raises the question of what it is that has happened to make the applicant unsuitable for the membership or licence for which he was previously thought suitable.

In my judgment the present case is plainly an application case. The authorities are clear that the Board has a duty to act fairly.

It is also clear from the authorities that the Board is not required to give any reasons for its rejection of the appellant's application: See *McInness v. Onslow Fane* and *R. v. Gaming Board for Great Britain.* In the absence of anything to suggest that the Board has been affected by dishonesty or bias or caprice or that there is any other impropriety, I think that the Board is entitled to give no reasons for its decision.

The appellant complains that at the interview he was asked ridiculous questions. The appellant is being impudent when he attacks the Committee and it appears to me that modesty is obviously not one of his virtues. The truth is that the appellant gave many incorrect answers to questions which were confined to the four projects referred to in the appellant's Report in which he said he was the project engineer. According to Mr. Ong Chin Lock many of the incorrect answers were to questions on elementary and basic engineering principles touching those projects. The members of the Committee are senior members of the profession and of the same discipline of engineers as the appellant. The appellant in his affidavit said that a member of the Committee commented that the Report contained works which he, the appellant, had not actually carried out and that the appellant was lying. The appellant stated that this member of the Committee had no proof of this and that his observation was unfounded.

Counsel for the appellant submits that the Committee should have put the appellant's Report to a proper objective study under the closest scrutiny, for example, his employers under whom he had worked under constant supervision could have been asked to verify whether he was able to carry out the duties of a professional engineer effectively in Singapore. They could also have been asked to put up a confidential report or an open report as to the truth of practical experience. I do not see any reason why the Committee should consult the appellant's ex-employers and present employers. The appellant cannot deny that he gave an incorrect answer when asked about the berthing speed of a vessel when berthing at the deep water jetty built for Prima Ceylon Ltd. at Sri Lanka which the appellant said he did the preliminary design and for which he was the Project Engineer responsible. If a vessel had tried to berth at the speed given by the appellant it would in all probability have demolished the jetty. According to Mr. Ong Chin Lock that was very elementary to a person who has designed the jetty. The Committee indicated to the appellant at the interview that some of his answers might be erroneous and gave him a chance to explain or correct. After the interview the appellant wrote to the Committee clarifying "the following points questioned by the Panel" and expressing regret for the wrong answer he gave for the berthing speed and giving the correct answer. The appellant's answers during the interview gave the Committee the impression that the appellant could not have designed all the structures which he claimed to have done and that even if he had done all those things, he had gained very little knowledge from his experience and the Committee was of the opinion that the appellant was unfit for registration. According to Mr. Ong Chin Lock the period of the interview of an applicant varies, it could be as short as fifteen minutes. A candidate who can answer readily would not be subjected to lengthy questioning. A candidate who is subjected to a long period of interview would invariably be the one who did not answer the questions correctly. In the case of the appellant the interview lasted fifty-five minutes and that according to Mr. Ong Chin Lock would be the longest interview in his experience.

Then it is said that the Board has erred in law on the facts before it by holding it could defer the appellant's application for one year and call the appellant for another interview and thus subjecting the appellant for an indefinite waiting period before his application could succeed.

One of the functions of the Board is to approve or reject applications for registration under the Act or to approve any such applications subject to such restrictions as it may deem fir to impose (s. 5). It seems to me that the Board has been kind to the appellant by not rejecting his application outright. It is well within the ambit of the powers of the Board to defer the appellant's application for a year.

Then it is said that there was no proper record before the Board for it to come to a proper decision and that Mr. Ong Chin Lock was biased and had influenced the Board's decision. It is clear that the decision not to register the appellant was the decision of the Board. The complaint of the appellant that there was a breach of natural justice as there was no proper hearing since the Board had made up its mind on the recommendation of the Committee is without foundation. The evidence is that the Board was properly constituted, it considered the report of the Committee and the clarification thereon made by Mr. Ong Chin Lock, who chaired the Committee, and there was a discussion and the Board decided not to register the appellant for the time being as in the opinion of the Board the appellant had not acquired sufficient knowledge from his practical professional experience as would enable him to discharge the duties of a professional engineer effectively. The Board would review the application in a year's time, if by then the appellant should be found to have acquired sufficient knowledge from his practical professional experience as would enable him to discharge the duties as a professional engineer effectively, the Board would register him.

I find that the Board has acted with complete fairness and that all the criticisms of the Board's conduct are without foundation.

This motion is dismissed with costs.

Also found at [1982] CLJ 207